



**Your Ref:**  
**My Ref:** RCA/Croydon  
**Date:** 17<sup>th</sup> December 2021

Browne Jacobson LLP  
Mowbray House  
Castle Meadow Road  
Nottingham NG2 1BJ

**By Email Only**

Dear Sirs

**Wildlife & Countryside Act 1981, Section 53 & Schedule 14**  
**Application for Definitive Map Modification Order**  
**Alleged Public Bridleway along Hawkhurst Road, Kenley**  
**Client: Croydon Council**

**Response to Matters Raised in Letter dated 23<sup>rd</sup> September 2021** [REDACTED]  
**(Supplementary Matter No 2)**

This document is compiled in accordance with instructions received from Richard Barlow of Browne Jacobson LLP on 19<sup>th</sup> October 2021, who act on behalf of Croydon Council (the Surveying Authority). It should be read alongside my original report into the above matter dated 19<sup>th</sup> August 2021, and the response document [REDACTED] dated 23<sup>rd</sup> September 2021.

A copy of the above instructions should be added to the document bundle attached to my original report as **Appendix 26**, and a copy of [REDACTED] response document has been included as **Appendix 27**.

This document has been divided into two separate parts. **Part 1** provides my response to relevant matters contained within [REDACTED] document [**App 27**]. I have not responded to matters which are not relevant to actual issue in hand, namely the existence, status and maintenance liability of Hawkhurst Road. For ease of reference, I have used the same sub-headings [REDACTED].

**Part 2** of this document provides my response to the specific questions that I have been asked to address by Richard Barlow of Browne Jacobson LLP. This may result in some duplication, but it appears the most effective means of providing a comprehensive response.

## **PART ONE: Response to Matters**

I note that [REDACTED] is acting on his own part, as a resident of a household who has a landowning interest [REDACTED] on **Plan 1 [App1]** of Hawkhurst Road, but that his submissions have been made with the knowledge, consent and support of the Director of Hawkhurst Road Limited. [REDACTED]

[REDACTED] I further note [REDACTED] based [REDACTED] submission on extensive private research into the law relating to private roads.

The above concessions are material to the consideration of the issues in hand, and to matters relating the interpretation of evidence etc. [REDACTED] tacitly acknowledged that he is not an expert in public rights of way and highways issues. That is not to say that he has not obtained some theoretical knowledge of the subject, but his evidence on such matters would not be admissible in court. [REDACTED] also has a direct interest in the outcome of this matter and in putting his case, he has a natural bias in favour of a desired outcome. Again, there is nothing wrong with this, indeed such bias has been recognised by the Courts with an accompanying warning that such evidence and submissions must be treated with an appropriate degree of caution<sup>1</sup>. Finally, [REDACTED] has extensively researched the issue of 'Private Roads', whereas this is a matter relating to "Public Highways" and this may have a further bearing on [REDACTED] understanding of certain matters.

The above matters are relevant because these factors must be weighed against the fact that I am a recognised and registered expert in this field with over 30 years practical working experience of the matters in contention. Furthermore, I have no direct or personal interest in the outcome of this matter. This is an entirely professional matter within which I have no bias of any type.

### **1. Summary**

In this section of [REDACTED] document [REDACTED] sets out [REDACTED] views and comments on the following:

- a) The Applicant's assertions over the extent of the alleged highway rights
- b) The means by which those rights may have been acquired
- c) His interpretation of the workings of the Definitive Map Modification Order Application and determination process
- d) The land ownership status during the relevant time period
- e) That in the absence of user witness evidence, reliance must be placed upon documentary evidence
- f) His views on how the documentary evidence must be interpreted
- g) Lists a number of documents
- h) Discusses, Signage, the 1934 Sales Particulars, the formation of mounds and planting of trees
- i) Makes various assertions and allegations regarding the professional integrity of the author of the original report (namely myself)
- j) Suggests that the report gives inaccurate advice regarding private rights and the Natural Environment & Rural Communities Act 2006

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<sup>1</sup> Norfolk CC v Mason (2003) NR250111 High Court Chancery Division, Norwich District Registry

k) The report is flawed and appears to advance a position that the Council would like to take

a) *The Applicants assertions over the extent of the alleged highway rights*

This is noted, but when determining an application, the Surveying Authority is not bound by the Applicants assertions or opinions. The Surveying Authority, and myself as the appointed independent expert, are obliged to follow the evidence trail and draw conclusions therefrom.

b) *The means by which those rights may have been acquired*

This is noted. It is agreed that whatever public highway rights subsist, if any, they have either come into being as a result of a process of dedication either since the current owners acquired the land, or at some point before that. I should add that in determining the application consideration must be given to both the tests set out within Section 31 of the Highways Act 1980, and also the issue of dedication under the Common Law.

c) *interpretation of the workings of the Definitive Map Modification Order Application and determination process*

asserts that the Applicant's case for bridleway status is "reasonably alleged" thus making it requisite for the Council to advance the bridleway status order requested by the Applicants. It is further suggested that the Council has no discretion to take an alternative position.

This suggests a misunderstanding of the workings of the Definitive Map Order application process. Upon receipt of an application for a Definitive Map Modification Order pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) the Surveying Authority is obliged to investigate the matters set out within the application but is not limited to only those matters. The Surveying Authority must follow the evidence and make an evidence-based decision even if this is contrary to the wishes of the original applicant. To do otherwise would be contrary to the requirements of Section 53 of the 1981 Act.

may believe that the evidence gives rise to a reasonable allegation in favour of desired outcome, but I disagree. When the evidence is subject to objective assessment it suggests, in my opinion, that higher rights subsist over Hawkhurst Road and the correct status should be that of Restricted Byway. The reasoning for this is set out within my report and will be expanded upon as part of this response document where necessary. I am also of the opinion that a Definitive Map Modification Order should be made to record Restricted Byway rights over section **A-B-C** (on **Plan 1 [App 1]**) of Hawkhurst Road. If such an Order is made, and if the Applicant, or indeed any other party are aggrieved by the Restricted Byway status they have the statutory right to object and have the evidence tested by way of a local public inquiry. I should, in fact go further, and say that it is my understanding that it is in such an

arena (e.g. a local public inquiry) that these more detailed exchanges should be taking place<sup>2</sup>

d) The land ownership status during the relevant time period

It is noted that the land in question was held on trust until 2016, but this is not necessarily a bar to dedication. If the land has been designated Crown Land at any time, ██████████ this may, of course defeat ██████'s own user-based case and reliance upon 20 years use pursuant to Section 31 of the Highways Act 1980. See Section 327 of the 1980 Act. This would not, of course prevent dedication arising under the Common Law, although in my opinion the pre-2016 user evidence in this case falls well short of satisfying the common law requirements.

e) That in the absence of user witness evidence, reliance must be placed upon documentary evidence

This is indeed the case and I assess both the user evidence and documentary evidence within my report. In doing so I conclude that the user evidence is insufficient to give rise to any presumption of dedication, reasonably alleged or otherwise. The evidence is of poor quality and in my opinion meets neither the "public user" test, the "as of right test, and in connection with both of these the "Sufficiency" test.

Even if the user evidence were to be sufficient to give rise to a reasonable allegation of bridleway rights (which I suggest it does not) this does not alter my conclusions that public rights higher than bridleway were established over a century before the user-evidence was collected. At that point, the modern user evidence is, at best, supportive of continued use "by right" as part of the Restricted Byway.

I can only add that there is no credible evidence to support ██████'s assertion that Hawkhist Road was set out as a private road (i.e. not a public highway) or as a public bridleway.

f) ██████'s views on how the documentary evidence must be interpreted

██████ clearly does not understand matters relating to the correct interpretation of evidence in matters of this nature. ██████ is not an expert on such matters. With regard to ██████'s statement that reliance has placed upon "documents created by persons who were incapable of dedicating or accepting public rights of way", ██████ is correct, but that does not devalue those documents as evidence. When these documents are considered in the whole, and subject to proper expert interpretation, they lead to the reasonable conclusion that Hawkhist Road was set out as a public carriageway and due to the specific circumstances is now considered to be subject to Restricted Byway Rights.

g) Lists a number of documents he relies upon

These documents were given appropriate consideration during the compilation of my report.

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<sup>2</sup> R (Roxlena Ltd) v Cumbria County Council [2019] EWCA. Civ 1639

h) Discusses, Signage, the 1934 Sales Particulars, the formation of mounds and planting of trees

With regard to the signage which is currently in place, and has been for some time, I have seen no evidence to support the speculative theory that such signage existed when Hawkthirst Road was first set out (circa 1900) nor for any substantial period of time thereafter. From the point when the signage in question was erected, it may of course be deemed to defeat any claim for public rights of any sort, including bridleway. This would, of course rather depend upon who installed the sign and on what authority. If they were not the landowner, or acting on their behalf, then the signage would not necessarily demonstrate a lack of intention to dedicate. It may however still constitute a bringing into question for the purposes of Section 31 of the Highways Act 1980.

It is acknowledged that the 1934 Sales particulars [App 11 pg. 188] include the suggestion that Hawkthirst Road is a private road. I have not however seen the presumably written legal advice, to which [REDACTED] alludes, that the Public Trustee was apparently provided with, relating the private status of Hawkthirst Road. If he has a copy of this advice, I should be grateful to receive a copy and I will review my position on the interpretation of that document and how it effects my overall conclusions.

Notwithstanding the above, I must of course, acknowledge that more than one interpretation can be placed upon this piece of evidence. What was actually meant, or intended, rather depends on whether the person drafting the document had the necessary experience to provide an accurate commentary on the status of the road.

In my experience, even within those parts of Highway Authorities that have responsibility for maintaining highway records etc, let alone estate agents and general practicing solicitors and conveyancers etc with little or no working knowledge of highway matters, usually refer to anything that is not a highway maintainable at public expense as being "private" regardless of its actual highway status.

When I have stated that the reference to "private" relates to maintenance liability as opposed to public rights, I am not suggesting that this was a consciously made decision by the person drafting the document. I base it upon my experience of such documents, and the, for want of a better term, the ignorance of the draftsman.

Certainly, when this one document is considered alongside all others I maintain that my interpretation of this document is not unreasonable. In any event, if I am correct in my findings over when public carriageway rights came into being (e.g. by 1910) any statement made 24 years after the event is of little or no value. It is simply incorrect.

i) Makes various assertions and allegations regarding the professional integrity of the author of the original report (namely myself)

I do not propose to comment on these matters as they are of no relevance to the issue in hand. In my experience such tactics are usually employed to seek to influence a local authority's decision-making process.

j) Suggests that the report gives inaccurate advice regarding private rights and the Natural Environment & Rural Communities Act 2006

I accept that at paragraph 17.2 of my report there is a typing error which refers to Section 67(4) instead of Section 67(5) of the Natural Environment & Rural Communities Act 2006. I do not however accept that the advice provided in this case is incorrect.

In making [REDACTED] comments [REDACTED] has taken two separate matters relating to private rights and taken them completely out of context in order to formulate some form of argument. During a telephone conversation initiated by [REDACTED], I did indeed state that it was not for me to comment on whether or not any of the properties along Hawkhurst Road were subject to private rights of access. Such rights were certainly not, at that time, recorded within the registered titles to the properties, and this is not surprising given that the Highway Authority was of the opinion that the road was a privately maintainable public carriageway. In the absence of any evidence to support [REDACTED] contention (and I have yet to see such evidence) that the properties were subject to private rights of access, it would have been highly inappropriate for me to give assurances that the householders private rights would not be affected. This first instance refers to a telephone conversation that took place before I had wholly completed my investigations.

The second instance is the commentary in my report, where I conclude that in accordance with the provisions of the Natural Environment and Rural Communities Act 2006 a private right of way will be established. If my conclusions regarding status are correct, then my conclusions regarding the establishment of the private right will also be correct. This will apply to all properties served by Hawkhurst Road, including that occupied by [REDACTED].

k) The report is flawed and appears to advance a position that the Council would like to take

Being an objective and impartial party to this matter, I am happy to consider, and respond to any alleged flaws, deficiencies and errors that are brought to my attention. If these lead to a change in my expert opinion I will also gladly concede that to be the case. That is, after all, the role of the independent expert.

The suggestion that my report appears to advance a position that the Council would like to take, has no basis in fact. I think that this is amply demonstrated by the fact that the Council's stated opinion to me was that they believed Hawkhurst Road to be an All Purpose Vehicular Highway (a Public Carriageway) that was maintainable at private expense, in other words, a "Private Street". My report concludes that this is not the case, it concludes that the route should be afforded Restricted Byway status and that it is not maintainable at public expense.

## 2. Private Land – Chain of Title

In this section of [REDACTED] document [REDACTED] sets out [REDACTED] views and comments on the following:

- a) A history of the ownership of the land
- b) That the land possibly formed part of the Crown estate (estimated to be between 1925 and 1935)

### a) A history of the ownership of the land

The fact that the land was held in trust is not necessarily a bar to dedication. The trustees clearly had the powers to dispose of the fee simple of the land and did so by selling it. If they had capacity to dispose of the fee simple, they would also have capacity to dedicate public highway rights in perpetuity. It was clearly in the interests of the trustees to set out Hawkhurst Road, to facilitate the sale of the land. Furthermore, there is no evidence to suggest that once set out, Hawkhurst Road was subject to any signage or barriers etc to suggest any lack of intention to dedicate. Dedication may be inferred from the act of physically setting out the road accompanied by a lack of any overt actions to demonstrate a lack of intention to dedicate.

### b) That the land possibly formed part of the Crown estate (estimated to be between 1925 and 1935)

Within this part of his submission [REDACTED] also appears to defeat [REDACTED] own arguments in favour of dedication arising from 20 years user (i.e. Section 31 of the Highways Act 1980). [REDACTED] suggests that for some time the land may have formed part of the Crown Estate. If this is the case, and the land was held by the Crown during any period that [REDACTED] relies upon [REDACTED] evidence of 20 years use, then his case may fail. This is because Crown Land is not subject to the provisions of Section 31 of the Highways Act 1980. Common Law dedication can still occur.

It should further be noted, with regard to the above that prior to the passing of the Rights of Way Act 1932 dedication could only arise at Common Law so for the period 1893 to 1932 and indeed thereafter and still today, common law dedication can occur.

## 3. The Wider Context

In this section of his document [REDACTED] sets out [REDACTED] views and comments on the following:

- a) a landowner may set out a road for some private purpose
- b) refers to my conclusions regarding the physical formation of Hawkhurst Road and that the land was held in trust at that time.
- c) Asserts that dedication of a highway was inconsistent with the functions of the trustees
- d) Asserts that consideration of the status of Section **B-C (on Plan1 [App 1])** should not only include Section **A-B (on Plan1 [App 1])** but also Longwood Road, Welcomes Road and the remainder of Hawkhurst Road.
- e) Asserts that Officers of the Council have expressed the view that the continuation of Hawkhurst Road southward is a bridleway and refers to the Definitive Map and Statement in this respect.

- f) Asserts that Any interpretation of documentary evidence where the Comparable Routes are treated in identical terms to the Private Land – such as the Finance Act 1910 Index Map – must be interpreted in the context of the statuses of the Comparable Routes
- g) Notes that the “bridleway” section of Hawkhisrt Road is separated from the Application route by a locked gate
- h) Asserts that the Application route is a cul-de-sac so far as vehicular access is concerned
- i) Asserts that there was and is an intentional setting out of trees, shrubs and bunds along the western boundary to delineate the boundary of the public highway
- j) Refers to various instances where attempts to access adjoining land have been thwarted
- k) Asserts that use of the land behind the bunds etc can never have been as of right

a) *a landowner may set out a road for some private purpose*

Whilst I should agree that a landowner may set out a road for some private purpose, if he does so, he must also take steps to disabuse the public of the notion that he intends to dedicate it as a public highway. This would be especially the case when the road is being set out to facilitate the sale of the adjoining land for building plots, and also creates it as a through route linking to other acknowledged public highways.

b) *refers to my conclusions regarding the physical formation of Hawkhirst Road and that the land was held in trust at that time.*

For the avoidance of any doubt my report finds that:

- i. there is evidence that Hawkhirst Road had been physically set out and named as Hawkhirst Road by 1902 (my para 9.3);
- ii. the road is not shown on the 1897 Ordnance Survey map, suggesting that it did not exist as of the date of survey (my para 15.2);
- iii. there is evidence of the road being set out in 1900 (my para 14.7)

I therefore conclude that the road was set out between 1897 (OS map) and 1900 (building notice), and we know that it was named Hawkhirst Road by 1902

As noted above, the fact that the land was held in trust is not necessarily a bar to dedication. The Trustees clearly had the powers to dispose of the fee simple of the land and did so by selling it. If they had capacity to dispose of the fee simple, they would also have capacity to dedicate public highway rights in perpetuity.

c) *Asserts that dedication of a highway was inconsistent with the functions of the trustees*

I disagree with [REDACTED] on this point. It was clearly in the interests of the trustees to set out Hawkhirst Road, to facilitate the sale of the land. For the avoidance of any doubt, there is no suggestion of any express dedication of public carriageway rights. Such dedication may be inferred from the actions of the landowner, namely the setting out of the road in the form it was created (e.g. a carriageway with verges along its length) and a lack of any actions, at that time, to demonstrate any lack of intention to dedicate. The exclusion of the Application Route from the adjoining hereditaments on the 1910 Finance Act Index Plan [App 12 pg. 192] is further evidence that is supportive of the proposition that dedication had both taken place and been accepted



by that time of its production. If this were not the case it would suggest some form of taxation fraud on the part of Trustees.

Furthermore, had the landowners intended it to be private, they would presumably have granted the new property holders rights of access to their property. They did not, and this is wholly consistent with the intention to dedicate the road as a public highway. It is also noted that the sales particulars include maintenance provisions only “*until the said roads shall be taken over by the Local Authority*” (Item 12 [App 11 pg. 180]). In my opinion this clearly infers that the intention of the landowner was that the roads are to be maintainable at public expense. Before they can be so maintained, they must first be dedicated as highways.

- d) Asserts that consideration of the status of Section B-C (on Plan 1 [App 1]) should not only include Section A-B (on Plan 1 [App 1]) but also Longwood Road, Welcomes Road and the remainder of Hawkhurst Road.

I should perhaps firstly clarify why Section A-B (on Plan 1 [App 1]) of Hawkhurst Road was included in the investigation, as such matters may not be clear to the inexperienced lay person. The Applicant’s original application, as submitted was, in my view potentially fatally flawed by the fact that the route they sought to register (B-C on Plan 1 [App 1]) had no point of acknowledged public terminus (e.g. it did not link to an acknowledged public highway at either end). As such their alleged bridleway would have been in a vacuum with no confirmed public access. This is inconsistent with the most basic fundamentals of the character of a highway.

Section A-B (on Plan 1 [App 1]) was chosen to be added to the investigation because it formed the direct access from a public highway, and also quite significantly was recorded at the same status as Section B-C (on Plan 1 [App 1]) on the Highway Authority’s records, namely as a privately maintainable public carriageway. It would have been possible to also include the continuation of Hawkhurst Road and even Longwood Road into the investigation, but this was not considered necessary at the time. The status of these two sections of road have however been subsequently considered in my first supplementary report dated 26<sup>th</sup> August 2021. It should be noted that my first supplementary report will need to be amended in light of Point e below.

- e) Asserts that Officers of the Council have expressed the view that the continuation of Hawkhurst Road southward is a bridleway and refers to the Definitive Map and Statement in this respect.

The amount of reliance that can be placed upon statements by Officers of the Authority over the status of the southern section of Hawkhurst Road rather depends upon the evidence they have considered before making such statements.

Contrary to [REDACTED] assertions the Definitive Map was considered within my report and was appended under Appendix 19. Furthermore, the southern section of Hawkhurst Road is not shown in the Definitive Map for the area.

The southern section of Hawkhirst Road is however recorded on the Definitive Statement (as No 191), albeit without any specified status. This gives rise to an anomaly in the records, which needs to be addressed. The route is also noted within the statement as “further evidence of status sought” which, in my opinion, suggests some irregularity in the compilation of the Definitive Statement.

Notwithstanding the irregularities, I acknowledge the error/omission within my report. Whilst this does not impact upon the conclusions within my report, paragraph 9.17 should be amended accordingly:

*“9.17 The Definitive Map for the area [APP 19 pg.281] does not record the existence of public rights over any part of Hawkhirst Road. The Definitive Statement [APP 19 pg.291] does however record the section of Hawkhirst Road running south from Point C (on Plan 1 [App 1]), albeit without any recorded status<sup>3</sup>.”*

As mentioned above, my first supplementary report, dated 26<sup>th</sup> August 2021, did seek to address the issue of the status of the section of Hawkhirst Road running south from Point C (on Plan 1 [App 1]). My consideration of the issue was based upon the route not being included in either the Definitive Map or Statement, thus allowing consideration under Section 53(3)(c)(i) of the 1981 Act, namely:

*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic”*

However, if the route is included in the Definitive Statement (albeit missing from the Definitive Map) it is possible that Section 53(3)(c)(i) of the 1981 Act will not apply, and that a different sub-section will have to be relied upon. If this is the case, the “reasonable allegation” test will not apply and any rights will have to be shown, “on balance of probability” to subsist before a Definitive Map Modification Order can be made.

Taking into account my original findings on this matter, the differences in the evidence between the Application Route and this section of Hawkhirst Road, and the above considerations it may be appropriate to seek to record bridleway rights south of {Point C (on Plan 1 [App 1])}.

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<sup>3</sup> This gives rise to me questioning whether this document is truly the Definitive Statement and if it is, the process through which it was compiled. It is most irregular to have a route recorded in this manner.

- f) Asserts that any interpretation of documentary evidence where the Comparable Routes are treated in identical terms to the Private Land – such as the Finance Act 1910 Index Map – must be interpreted in the context of the statuses of the Comparable Routes

With regard to the suggestion that consideration should be given to the recorded status of other roads in the area, I would be cautious about adopting such a practice unless every record set is identical; and in the case of anything that is not on the Definitive Map or the List of Streets Maintainable at Public Expense unless the status has been fully investigated.

- g) Notes that the “bridleway” section of Hawkisrt Road is separated from the Application route by a locked gate

I am aware of the gate at the southern end of the Application Route, and that anyone heading south from that point has to navigate around the gate. Whether that gate is a legitimate limitation on use, or an unlawful obstruction of the highway (regardless of status) will depend upon when the gate was installed. If the gate was in place before public rights came into being, then it may be considered a limitation on use. If it was placed across the road after highway rights were established, then unless it has been lawfully authorised, the gate will be an unlawful obstruction. Given that Ordnance Survey map up to 1943 [App 13] do not show a gate across the road, I am minded to conclude that the latter is the most likely explanation.

- h) Asserts that the Application Route is a cul-de-sac so far as vehicular access is concerned

It is my understanding that there is nothing in law which prevents a highway being a cul-de-sac, and [REDACTED] has perhaps oversimplified or misunderstood some of the fine points of consideration when dealing with this issue. [REDACTED] looking at the situation as exists now, and not as it was when the road was originally set out.

If we were dealing with a solely user based case, which we are not, it may be necessary to demonstrate why the public travelled to C (on Plan 1 [App 1]), then turned around and traced their steps. Similarly, if we were considering a case where the Application Route was ancient in nature, with the point of dedication lost somewhere in the mists of time, we may find ourselves with a similar quandry. In this case however, we know when the road was set out, and the full extent to which it was set out for a considerable distance beyond Point C (on Plan 1 [App 1]). We also know that it is not actually a cul-de-sac because it links into Longwood Road to allow an onward journey.

- i) Asserts that there was and is an intentional setting out of trees, shrubs and bunds along the western boundary to delineate the boundary of the public highway

I have seen no evidence which suggests these bunds and the planting were in place prior to 1909/1910, that being the datum point for the 1910 Finance Act Index Plan [App12 pg. 192]. In my opinion, this document can be relied upon to identify the highway boundary by reference to the red line boundaries which have been added to the Ordnance Survey base map by the Inland Revenue Surveyors. If private land extended beyond the red lines and further into the road corridor, it would have been shown as such on the Index Plan and included in the valuations. There is no evidence

to suggest the falsification of these records (which I understand would have amounted to a criminal offence).

j) Refers to various instances where attempts to access adjoining land have been thwarted

Private disputes are not matters that fall within the scope of my report, or indeed the determination of the Application. It is however my opinion that the planting of trees and provisions of bunds are not sufficiently overt acts, on the part of a landowner, to amount to a qualifying lack of intention to dedicate highway rights.

k) Asserts that use of the land behind the bunds etc can never have been used as of right

It is my understanding that the law has no concept of 'highway land': land is either highway, or not highway. If it is highway, then there is a right of passage over it. The purpose of enclosing any highway is to delineate the streetward private landholding from the public right of passage, *ergo* any land inside the enclosures is presumptively highway and the public has the right to pass and re-pass over it all. That the public chooses not to, or that circumstance persuades or constrains them not to, does not in any way diminish their right to pass over the entire width "*at their own free will and pleasure*", by any lawful mode, and to enforce that right against any encroachment or neglect of duty<sup>4</sup>.

#### 4. Dedication and Acceptance, and Capacity

In this section of his document [REDACTED] sets out [REDACTED] views and comments on the following:

- a) The land in question was held in trust during the period that the Council alleges that the highway rights came into being.
- b) The land will have been held by the public trustee, firstly in the interest of the trust and more latterly as part of the Crown Estate.
- c) Trustees and Public Bodies have no capacity to dedicate highways if this is incompatible with the purposes for which the land is held
- d) The report does not consider the issue of capacity to dedicate
- e) Under Common Law there must be someone with capacity to dedicate
- f) None of the evidence provided supports the proposition that the trustees intended to dedicate the way as a highway for all types of traffic from boundary to boundary (such dedication being inconsistent with their duties as trustees of the estate), that they had the power to do so, or that the public accepted the dedication.
- g) There is no witness evidence of twenty years continued use to support the assertion that the Private Land was used as a carriageway for all classes of traffic along its entire width, and for this purpose the Report does not provide a date at which the right was brought into question
- h) The Council report therefore relies purely on documentary evidence to assert deemed dedication in accordance with Section 32 of the HA 1980.

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<sup>4</sup> Foy v. Hertfordshire County Council - The Times 4<sup>th</sup> May 1990

- a) The land in question was held in trust during the period that the Council alleges that the highway rights came into being.

I agree that this would appear to be the case, but this is not a bar to dedication

- b) The land will have been held by the public trustee, firstly in the interest of the trust and more latterly as part of the Crown Estate.

This would appear to be the case and is potentially fatal to any user evidence-based case based upon Section 31 of the Highways Act 1980, which does not apply to Crown Land. Whilst not considered within my original report, this is potentially a further ground for refusing the Applicant's user-based case.

- c) Trustees and Public Bodies have no capacity to dedicate highways if this is incompatible with the purposes for which the land is held.

I am very familiar with this concept, but I do not consider the dedication of a highway to be incompatible with the purposes for which the land was being held.

- d) The report does not consider above the issue of capacity to dedicate.

It is my understanding that the issue of capacity to dedicate has only just been raised by ██████, but this may or may not be the case. As previously indicated, it is my opinion that the landownership status is not, in this case, a bar to dedication.

- e) Under Common Law there must be someone with capacity to dedicate.

This is agreed, and this may include trustees. If the trustees have capacity to dispose of the fee simple of the land, which they clearly did, then they may also have capacity to dedicate providing such dedication is not incompatible with the purpose for which they hold the land. I do not consider the dedication of a highway to be incompatible with the purposes for which the land was being held.

- f) None of the evidence provided supports the proposition that the trustees intended to dedicate the way as a highway for all types of traffic from boundary to boundary (such dedication being inconsistent with their duties as trustees of the estate), that they had the power to do so, or that the public accepted the dedication.

The proper interpretation of the evidence falls within the remit of an expert, and ██████ is not such an expert. The documentary evidence when objectively assessed and properly interpreted gives rise to an inference of dedication on the part of the landowners. Capacity to dedicate has already been discussed above, and acceptance by the public is demonstrated by the reference to the Application Route being an existing highway in the 1930 Town Planning Scheme [App 15]. In my opinion this points towards public acceptance and acceptance by the public authority on behalf of the public.

With regard to the width/extent of rights, I place reliance upon the so called 'boundary to boundary' presumption, discussed in my original report, and which is supported by the evidence of the 1910 Finance Act Index Map [App 12].

- g) There is no witness evidence of twenty years continued use to support the assertion that the Private Land was used as a carriageway for all classes of traffic along its entire width, and for this purpose the Report does not provide a date at which the right was brought into question.

My conclusions are based upon the documentary evidence and dedication being inferred at Common Law. I place no reliance upon user evidence.

When considering the user evidence, I discussed the dates when rights may be considered to have been brought into question in paragraphs 11.5 – 11.7 of my report. There is no need to identify a bringing into question sfo the purposes of common law dedication.

- h) The Council report therefore relies purely on documentary evidence to assert deemed dedication in accordance with Section 32 of the HA 1980.

In reaching my conclusions I rely upon the principles of common law dedication, as set out in my original report. In doing so I have taken into consideration the requirements of Section 32 of the Highways Act 1980.

## 5 Documentary Evidence Relied Upon by the Council

In this section of his document [REDACTED] sets out his views and comments on the following:

- a) Sales particulars
- b) 1910 Finance Act records
- c) Ordnance Survey Maps
- d) Local Bylaws
- e) 1930 Town Planning Scheme
- f) Building Notices
- g) 1937 Private Street works Scheme, committee minutes
- h) Highway Authority Records
- i) Registered Title Documents

### a) Sales particulars

The issue of compatibility has already been addressed above. In my opinion there is no incompatibility with the dedication of the of the Application Route as a Public Highway. If it had been incompatible, the sale particulars would not have included the requirement that the property holders maintain the road until such as time as the local authority take over maintenance [App 11 pg. 180 Item 12]. Furthermore the 1930 Town Planning Scheme [App 15] indicates that public highway rights had already come into being by that time.

Whilst [REDACTED] is correct in suggesting that these documents be treated with caution, [REDACTED] is incorrect in asserting that private rights are set out within the sales particulars. The reference to the ‘Private Road’ is open to interpretation and misunderstanding..

In my experience of such matters [REDACTED] places far too much reliance on the ability of whoever compiled the sales particulars to have made proper enquiries as to the

status of Hawkhurst Road. There is no evidence to suggest that the status was investigated. At most they are likely to have made an inquiry of the local Highway Authority who would only be able to actually comment upon whether the road was included in their records or not, with a negative response often being misinterpreted by solicitors and conveyancer etc as no public rights existing. In my opinion, even if the author of the sales particulars was of the opinion that the road was private, the evidence when considered in the whole suggests that he/she was mistaken.

██████████ references to Section 31 of the Highways Act 1980, and the significance of the date 1934 appear to arise from a misreading or misinterpretation of the legislation. It is my understanding that the 1934 date refers to the physical placing of signs (notices) on site, and not passing references in a sales document. I should add that, in my opinion, the reference to "Private Road" in the sales particulars would not qualify as a lack of intention to dedicate because it does not meet the tests set out in *R (on the application of Godmanchester Town Council) v SoS for Environment Food and Rural Affairs* [2007] UKHL 28.

b) 1910 Finance Act records

I agree with ██████████ that, as per *Fortune v Wiltshire CC* [2012], the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle". At no point have I suggested otherwise. They are just one of the sources of evidence I have relied upon when reaching my conclusions.

The exclusion of a way from valuation on the 1910 Finance Act Index map is good evidence of public highway status. In this case this document is an important part of the "jigsaw". We know that the road was set out and named by circa 1902, and the Finance Act records point towards it having been accepted as a public highway by 1909/10. This is entirely consistent with the later 1930 Town Planning scheme which confirms that by that time (1930) the public highway rights already existed.

Whilst I accept that a route may be excluded from valuation for reasons other than it being a public highway, in my experience this is very rare, and is usually supported by documentation such as an enclosure award. To this effect, Section 11.7 of the Definitive Map Consistency guidelines advises: '...It has been noted, for example, that there are some cases of a private road set out in an enclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach.....'

c) Ordnance Survey Maps

I do not disagree with ██████████ submission on these documents. They provide excellent evidence, as of their date of survey, of the existence of the physical features they depict.

These maps have been of assistance, along with other documents, in determining when Hawkhurst Road was physically set out and named. They have also been of assistance in identifying the manner in which the road was set out, namely a central

carriageway with verges to each side and bounded by some form of solid boundary feature. Finally, they have also been of assistance in identifying the fact that there were no gates across the route in the earlier part of the Twentieth Century. All of these factors, when considered alongside the other available and relevant evidence, are of assistance in reaching a conclusion.

d) Local Bylaws

My report acknowledges that the Bylaws post-date the setting out of the road and also that any reference to earlier bylaws is purely speculative.

██████████ has employed a degree of speculation on this point, yet fails to acknowledge this. ██████████ suggestion that *“those who were employed to set it out would have been professionals that adhered to whatever conventions were applicable at the time as a matter of convenience only”* is entirely speculative. It would show a total disregard for the cost of such works which would have been a significant factor for the trustees. In my opinion, I consider it far more credible that the road was set out to such a standard with the direct intention that it was to be “adopted” by the Highway Authority (as per the sales details [App 11 pg. 180]).

e) 1930 Town Planning Scheme

I agree that this is the first document that directly acknowledged that public highway rights **already exist** (as of 1930) over the Application Route. This document provides good evidence of the reputation of the route as a public highway.

There is no suggestion, on my part, that the author of this scheme dedicated the highway rights or that he/she had capacity to dedicate. It is unclear what point ██████████ is actually trying to make by making this statement.

f) Building Notices

The Building Notice is evidence relating to the history of Hawkthorn Road, and as such it must be taken into consideration. In this instance it assists in determining when the road was physically set out

Again, there is no suggestion on my part that the author of this scheme dedicated the highway rights or that he/she had capacity to dedicate. It is unclear what point ██████████ is actually trying to make by making this statement.

g) 1937 Private Street works Scheme, committee minutes

██████████ appears to have misunderstood these documents. By 1937 the public highway rights had already come into being. The private street works scheme would only serve to change an existing privately maintainable public highway into a publicly maintainable public highway. In order to do this the highway authority would not have to have capacity to dedicate anything. The highway rights already subsisted.

The 1938 minutes [App 18 pg. 256] refer to the provision of verges and tress, which would have had to be situated within the highway. I see no rationale behind ██████████



argument that the trees have ever been used to identify a highway boundary (unless the form part of a hedge line).

*h) Highway Authority Records*

I do not agree with [REDACTED] assertion that the inclusion of the Application Route in the Council's highway records has no legal significance. On the contrary the inclusion of the road in such records is very significant, and in my opinion, cannot be lightly disregarded.

A number of points under this heading have no relevance to the determination of the application therefore I do not propose to make comment.

*i) Registered Title Documents*

As of the date of my report, the Registered Title documents did not include any reference to private rights of access. This is entirely consistent with the Application Route being included in the Council's Highway Records as a privately maintainable public carriageway.

I do not propose to make any comments on the issue of alleged unrecorded private rights and easements and is outside the scope of my report.

## **6 HRL Evidence**

In this section of his document [REDACTED] sets out his views and comments on the following:

- a) The DMMO Application
- b) The User Evidence

*a) The DMMO Application*

The Applicant's "submissions" are precisely that, they represent the opinions of the Applicant and contain little or no actual "evidence". These submissions are included in the appendices which accompany my report, so that the decision maker can give them due consideration.

*b) The User Evidence*

I do not agree with [REDACTED] approach to or interpretation of the user evidence. In my view a proper analysis of the user evidence reveals that it simply does not come up to the required standard for proving the establishment of a public right of way.

The user witnesses are generally property holders adjoining the Application Route or visitors to such properties and as such their use is primarily not to be considered to be "as of right". There are further questions as to whether these people can be legitimately considered to be classed as members of the public, as opposed to a closed sector of the community. These deficiencies in the evidence give rise to further considerations over whether there is a sufficiency of public use.

There are then a number of deficiencies in the user evidence forms and the manner in which certain questions have been asked, and other information presented.

A simple question to consider when interpreting user evidence is how a landowner wishing to prevent public rights being established would differentiate between the private use and the alleged public use, of the user witnesses. The answer is that in this case he could not readily do so.

Overall, in my opinion, the user evidence is sub-standard and cannot be relied upon to prove the existence of public rights.

## **7. Decision Making Process**

In this section of his document [REDACTED] sets out his views and comments on how the decision-making process should be undertaken by reference to a number of pieces of case law.

I do not disagree with the factual analysis of the cases cited by [REDACTED], they are all principles that I work with on a daily basis. I do not however agree with [REDACTED] suggestions over practical implementation and specifically the point he seeks to make to the effect that if there is a reasonable allegation in favour of bridleway rights over the Application Route, all other matters, and the conclusions within my report, should effectively be ignored.

This is an incorrect interpretation of the Surveying Authority's statutory duties. When determining an application for a Definitive Map Modification Order the Authority are obliged to follow the evidence, not the wishes of the Applicant. The Authority must take into account all available and relevant evidence before making its decision.

## **8. Independence of the Report**

This section does not contain anything that is actually relevant to the determination of the Application, therefore I do not propose to make any comment on the various statements that have been made.

### **Additional documents Submitted by [REDACTED]**

#### Statutory Declaration

This statutory Declaration, if valid, will bring into effect the previously submitted Form CA 16 which is used for the purposes of Section 31(6) of the Highways Act 1980, and is used to demonstrate a lack of intention to dedicate public rights. Such deposits and declarations do have any retrospective effective.

I say, if valid, because such a declaration should now be submitted using the standard form set out in Form CA16 for such declarations. It would be a matter of law whether a separately produced Statutory Declaration can still have effect.

#### Witness Statements

I have read both of the additional statements that have been submitted by [REDACTED] and there is nothing within them that would lead me to alter the findings within my report.

### **Conclusion (Part One)**

Having considered all of the material now provided, and other than as set out in my comments above, I do not consider that my report recommendation could or should be revised.

### **PART TWO: Response to Specific Questions from Richard Barlow of Browne Jacobson LLP**

*(i) It is inconsistent with the function of the trustees who held the relevant land to devalue the private estate by creating public rights of way over the Private Land that did not exist previously, particularly when all the surrounding land was still privately held, and indeed afterwards;*

I agree that it would be inconsistent with the function of the trustees to devalue the land in any way, or at least without good and legitimate reason.

I do not however consider that the setting out of Hawkhurst Road or its dedication as a public carriageway would serve to devalue the land. On the contrary I believe it would increase the saleability of the land and in turn, under the circumstances, would be a positive act which would potentially add value to the land. If this were not the case they surely wouldn't have set out the road in the manner they did.

*(ii) Public rights attributable to the Private Land must be considered in the context of rights attributable to the land to the South of the Private Land (that intersects with Longwood Road and terminates in woodland) (the "Hawkhurst Bridleway"), Longwood Road, and Welcomes' Road (together, the "Comparable Routes") - the Private Land and the Comparable Routes are referenced by the cartographer in equal terms in the Finance Act 1910 Index Map;*

Such a comparison exercise is not a reliable means of ascertaining status without first undertaking a detailed investigation into the status of each of the comparison routes to see if any recorded status is actually correct, and also whether all other evidence is the same as with the Application Route. Unless all documents are identical in what they show it is possible that differing conclusion regarding status may be reached.

(iii) Does the formation, laying out of and maintenance of uniform trees, shrubs, and bunds well within and along the western boundary of the Private Land, to delineate and restrict private and, where relevant, public usage of the Private land along its western boundary negate the presumption of boundary to boundary highway width in this instance?

I do not believe so for the following reasons:

- a) Firstly, I have seen no evidence that these trees, shrubs and bunds were set out at the time of, or before, the highway rights came into being;
- b) Secondly, I have seen no evidence as to when these features were planted/created or who planted/created them, and on what authority;
- c) Finally, features such as shrubs and trees, unless part of the hedgerow would, not, in my opinion, be considered to be a boundary

In my opinion the party asserting that these features form a legal (highway) boundary needs to substantiate their claim by the production of actual evidence.

(iv) Capacity to dedicate – what is the position regarding the asserted incapacity of the trustees of the relevant land to dedicate the route as a highway during the relevant period which you identified?

My findings with regard to the establishment of the public carriageway rights relies upon the common law, namely the actions of the landowner of physically setting out the Application Route as a Public Carriageway, accompanied by later evidence from which it can be inferred that the public have accepted the dedication.

It is clear that the landowners, even if trustees, had the lawful capacity to dispose of the fee simple of the land. If this is being questioned it potentially calls into question the very title to the land upon which the individual properties along Hawkthirst Road are built. If the trustees have capacity to dispose of the fee, then they also have capacity to dedicate highway rights in perpetuity.

I accept that there may be circumstances where trustees may not have capacity to dedicate, such as if it were not in the interests of the trust to do so.

As set out above I do not consider that the setting out of Hawkthirst Road or its dedication as a public carriageway would not be in the interests of the trust. On the contrary I believe it would be in their interests because it would serve to increase the saleability of the land and in turn, under the circumstances, would be a positive act which would potentially add value to the land.

If, as has been asserted, the land was, at any time Crown Land, then this would, subject to Section 327 of the 1980 Act, and any similar provisions in its predecessor legislation, be a bar to dedication arising under the statutory provisions, but it would not bar dedication under common law.

(v) What is the position regarding the sales particulars? In particular the view of [REDACTED] that the reference to "Private Road" in 1934 firstly should be interpreted in accordance with the decision in Mann v Brodie [1835] 10 App Cas 378 and secondly applying s 31 Highways Act 1980 the use of that phrase negates the intention to dedicate the land as a highway;

As [REDACTED] has not cited what part of Mann v Brodie he places a reliance upon it is difficult to comment with any certainty. If however it is the reference to a landowner having to take sufficient steps to disabuse the public that a way is public (which seems likely) then I do not think that the sales particular, which would only be viewed by an exceptionally limited section of the public would be considered sufficient. Furthermore, by the time the document was produced, it is my opinion that the public carriageway rights had already been established.

With regard to the 1934 sales particulars and the assertion that the reference to a "Private Road" constitutes a lack of intention to dedicate for the purposes of Section 31 of the Highways Act 1980, I do not believe that this is correct. In my opinion it does not meet the tests set out in the "Godmachester" decision, namely that such acts must be sufficiently overt (it is not), and directed at actual users of the way (it is not). Again, by the time the document was produced, it is my opinion that the public carriageway rights had already been established.

(vi) The Finance Act 1910 records do not really assist with identifying the status of the route, given that adjoining routes, which are established as bridleways on the Definitive Map (the southern part of Hawkthirst Road and Welcomes Road), are treated in precisely the same manner;

The 1910 Finance Act documents provide good evidence in support of highway status in their own right. Furthermore, in my opinion, when considered alongside all of the other available and relevant evidence they form part of a compelling case in favour of public carriageway rights. The 1910 Finance Act Index Plan also provides good evidence, in my opinion, of the extent of the public highway rights i.e. the extend of the land that was excluded from valuation.

(vii) Similarly [REDACTED] views about the value for status to be derived from the Ordnance Survey maps;

The Ordnance Survey maps provide evidence of physical features, as opposed to evidence of the existence of public rights, that is not to say they can be disregarded. They fall within the category of available and relevant evidence. When objectively interpreted they assist in forming the overall history of the Application Route.

(viii) Your response to the points made by [REDACTED] regarding local Byelaws, the 1930 Town Planning Scheme and the Building Notice;

My report acknowledges that the Bylaws post-date the setting out of the road and also that any reference to earlier bylaws is purely speculative.

[REDACTED] has [REDACTED] employed a degree of speculation on this point, yet fails to acknowledge this. [REDACTED] suggestion that "those who were employed to set it out would have

*been professionals that adhered to whatever conventions were applicable at the time as a matter of convenience only” is pure speculation. This would show a total disregard for the cost of such works which would have been a significant factor for the trustees. In my opinion, I consider it far more credible that the road was set out to such a standard with the direct intention that it was to be “adopted” by the Highway Authority (as per the sales details [App 11 pg. 180]).*

I agree that the Town Planning Scheme (1930) is the first document that directly acknowledged that public highway rights **already exist** (as of 1930) over the Application Route. This document provides good evidence of the reputation of the route as a public highway.

The Building Notice is evidence relating to the history of Hawkthirst Road, and as such it must be taken into consideration. In this instance it assists in determining when the road was physically set out

There is no suggestion on my part that the author of any of these documents dedicated the highway rights or that he/she had capacity to dedicate. It is unclear what point [REDACTED] is actually trying to make by making this statement.

*(ix) Your response to the points made by [REDACTED] regarding the 1937 Private Street Works Scheme, Committee Minutes and the Highway Authority records;*

[REDACTED] appears to have misunderstood the documents relating to the Private Street Works Scheme. By 1937 the public highway rights had already come into being. The private street works scheme would only serve to change an existing privately maintainable public highway into a publicly maintainable public highway. In order to do this the highway authority would not have to have capacity to dedicate anything. The highway rights already subsisted.

The 1938 minutes [App 18 pg. 256] refer to the provision of verges and tress, which would have had to be situated within the highway. I see no rationale behind [REDACTED] argument that the trees have ever been used to identify a highway boundary (unless the form part of a hedge line).

I do not agree with [REDACTED] assertion that the inclusion of the Application Route in the Council’s highway records has no legal significance. On the contrary the inclusion of the road in such records is very significant, and in my opinion, cannot be lightly disregarded.

*(x) The comments of [REDACTED] regarding the easements of necessity and prescription and deeds of easement yet to be registered in relation to owners of dwellings adjacent to the route;*

The existence of easements of necessity and prescription are outside scope of my experience. I can only go so far as to say that there is/was no documented private rights of access along Hawkthirst Road and given the fact that for almost 90 years the Local Authority has publicly acknowledged, and presumably declared on land charge searches, that the road is a privately maintainable public carriageway, this is not surprising.

With regard to newly granted deeds of easement that have yet to be registered, these are of no relevance to the determination of the Application. They have no retrospective effect. Furthermore, given that the owners of Section B-C (on Plan 1 [App 1]) of Hawkhurst Road will have no lawful capacity to grant rights over land not in their ownership (e.g. Section A-B of Hawkhurst Road) any such rights, will exist in a vacuum, possibly with no lawful means of reaching them. A public highway would not be legally capable of existing under such circumstances, but I do not know if the same applies to private rights.

A further question arises as to whether the current landowners can actually grant such rights if, as continually asserted by [REDACTED], said rights already exist. It is my understanding that, as a matter of law, one cannot create something that already exists.

(xi) Can you engage further with the user evidence in the light of the views of [REDACTED] and in view of the fact that the earlier evidence may not be so clear cut as to the status of the route as it is presented in the current report?

The user evidence that has been put forward in this case is, in my opinion, insufficient to give rise to any presumption of dedication, or indeed evidence of acceptance. It is tainted by evidence of use of a nature that can only be defined as being “by right” as opposed to being “as of right” and it is questionable whether the users actually constitute “the public” as they are either property owners/occupiers on Hawkhurst Road or their visitors or invitees. This, in turn, gives rise to the question of sufficiency of use.

Any landowner wishing to prevent the establishment of public rights would find it impossible to differentiate between users “by right” and use that was “as of right” in these circumstances.

Even putting the above concerns aside, which in my view are fatal to the user evidence case anyway, the user evidence cannot be considered in isolation. There is a requirement that all available and relevant evidence be taken into consideration. As a result, when the user evidence is considered alongside the documentary evidence it is clear, in my opinion, that the public carriageway rights were established at a point which is now beyond living memory. The user evidence is therefore at best, evidence of the continued use of elements of those earlier established rights.

(xii) Could you please remove reference to private rights of way save where it is essential for the purposes of the report. That there is a dispute regarding the existence or otherwise of private rights of way in respect of land on the west of the route [REDACTED] [REDACTED] is not, generally, the concern of the Council.

The only references to private rights within my report are those which are essential for the purposes of my report. I have no detailed knowledge of any dispute regarding [REDACTED]. My comments and conclusions regarding private rights are directed at all property holders along the Application Route.

Do you think that there is a sufficient basis of evidence to support the Council deciding that the status of the DMMO element of Hawkhirst Road is that of bridleway?

No, I do not believe that there is a credible case upon which it could be concluded that the Application Route is a bridleway.

Can the authorities cited by ██████████ in his section 7 - R v SSE ex parte Bagshaw and Norton (QBD) [1994] 68 P & CR 402, [1995] JPL 1019 (ROW Note 14/05, Training Notes S9 Annex 9.4) and R v SSW ex parte Emery (QBD) [1996] 4 All ER 1, (CA)[1998] 4 All ER 367, [1998] 96 LGR 83 be relied upon to found a decision by the Council that the route has bridleway status?

No, I do not believe the cases cited can be relied upon to base a decision by the Council that the Application Route is a bridleway.

The reason that we ask you to reconsider this aspect is from a pragmatic perspective. Those who live alongside this part of Hawkhirst Road take the view that the route has bridleway status. Is it possible for you to conclude that there are credible cases both for the route to have bridleway and perhaps also restricted byway status?

I'm afraid that neither myself nor the Surveying Authority have the luxury of taking a pragmatic approach over this issue. The Surveying Authority has a clear duty to make an evidentially based decision one way or the other. The Application Route can only be of one status. It cannot be a bridleway and a restricted byway, not least because the bridleway rights are included within the restricted byway right. In my view the evidence all points in one direction, namely Restricted Byway

I trust that the above comments etc are of assistance. If you need any further clarification, please do not hesitate to contact me.

Yours faithfully



Robin Carr FIPROW  
Principal Consultant